

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 23 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0045-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
GARY EUGENE YODER,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200100007

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

James P. Walsh, Pinal County Attorney
By Paul W. Ahler

Florence
Attorneys for Respondent

Gary Yoder

Buckeye
In Propria Persona

K E L L Y, Judge.

¶1 Following a jury trial, petitioner Gary Yoder was convicted of one count of first-degree burglary and three counts of aggravated assault with a deadly weapon. The trial court imposed consecutive and concurrent, presumptive sentences totaling fourteen

years' imprisonment. We affirmed Yoder's convictions and sentences on appeal, *State v. Yoder*, No. 2 CA-CR 2002-0043 (memorandum decision filed May 27, 2004), and subsequently denied relief on three petitions for review from the court's denial of his petitions for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., *State v. Yoder*, No. 2 CA-CR 2005-0380-PR (memorandum decision filed June 15, 2006); *State v. Yoder*, No. 2 CA-CR 2007-0154-PR (memorandum decision filed Oct. 12, 2007); *State v. Yoder*, No. 2 CA-CR 2011-0015-PR (memorandum decision filed Apr. 28, 2011).

¶2 Yoder now seeks review of the trial court's summary dismissal of his January 2012 Motion to Correct Jail Time by Trial Court Judge, a motion the court treated as a petition for post-conviction relief. In its ruling, the court found the motion constituted an untimely and successive claim, which it found precluded because of Yoder's failure to explain why he had not previously raised it. In what appears to be an attempt to appeal from the court's ruling dismissing his motion, Yoder filed a Motion to Appeal to Court of Appeals Div. (2). Noting that Yoder "has no appeal rights in a Rule 32 matter," the trial court struck his motion on March 8, 2012. Yoder subsequently filed this petition for review. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶3 In his petition for review, Yoder presents numerous issues,¹ many of which he appears to have raised previously and many of which he did not present to the trial court below. To the extent Yoder has presented any cognizable legal arguments,² he is precluded from relief because the issues he raises either were raised or could have been raised in a previous proceeding. *See* Ariz. R. Crim. P. 32.2(a). And Yoder has not established that any of the claims fall within the exceptions to the rule of preclusion. *See* Ariz. R. Crim. P. 32.2(b). Moreover, to the extent Yoder has raised a multitude of claims

¹These claims include, inter alia, assertions of bias and prejudice, illegal conduct by police officers, incorrect calculation of presentence incarceration time, “fraudulent indictment,” lack of jurisdiction and a significant change in the law.

²We previously admonished Yoder that citation to authority without legal argument amounts to waiver of his claims. In our ruling from a previous petition for review in this matter, we stated:

We note that several portions of Yoder’s filings fail to comply with the rules of criminal procedure. Although they contain extensive citation to legal authority, large portions of them contain no cogent legal argument as to the relation of that authority to Yoder’s case. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review must comply with rule governing form of appellate briefs and contain “reasons why the petition should be granted” and either appendix or “specific references to the record”); Ariz. R. Crim. P. 31.13(c)(1)(vi) (briefs must contain argument and supporting authority); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review); *State v. French*, 198 Ariz. 119, ¶ 9, 7 P.3d 128, 131 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for review), *disapproved [of] on other grounds by Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067 (2002).

State v. Yoder, No. 2 CA-CR 2011-0015-PR, n.1 (memorandum decision filed Apr. 28, 2011).

he did not present to the trial court, we will not address them. *See* Ariz. R. Crim. P. 32.9(c); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court does not consider issues in petition for review that “have obviously never been presented to the trial court for its consideration”).

¶4 Therefore, we grant the petition for review but relief is denied.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge